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**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION**

UNITED STATES OF AMERICA, )  
PLAINTIFF, )  
v. )  
MAHER FAYEZ KARA, )  
MOUNIR FAYEZ KARA )  
(A/K/A MICHAEL F. KARA), and )  
EMILE YOUSSEF JILWAN, )  
DEFENDANTS. )  
CASE No.: CR 09-0417-MHP  
UNOPPOSED MOTION FOR COMPETENCY  
EXAM AND HEARING; [PROPOSED]  
ORDER  
HON. MARILYN HALL PATEL

## I. Preliminary Statement

Defendant Michael Kara has authorized his lawyers to enter into settlement negotiations with the government. Over the past few weeks, the parties have actively

1 participated in such talks and are discussing the possibility of Michael entering a guilty  
2 plea agreement that would involve cooperation.  
3

4       But before this Court could properly accept a guilty plea from Michael Kara, it  
5 must ensure that the defendant is mentally competent. The defendant must be able to  
6 knowingly and intelligently waive his constitutional trial rights. Michael Kara's  
7 interactions with defense counsel raise a bona-fide doubt as to his competency to enter  
8 such a plea.  
9

10       Accordingly, on behalf of defendant Michael Kara, his attorneys of record hereby  
11 move, under 18 U.S.C. §§ 4241 and 4247, that this Court order a hearing and a  
12 corresponding psychiatric examination and report to determine his competency to enter a  
13 guilty plea.  
14

15       While the United States does not take a position as to whether the defendant is, in  
16 fact, incompetent to enter a plea in this action, it does not object to the defense's request,  
17 given Michael Kara's medical history and representations of counsel regarding certain  
18 statements made by Michael Kara during the course of their representation.  
19

## 20                   II.     Argument

### 21                   A. Before accepting a guilty plea from Michael Kara, a Court must first find 22                   that he is competent to waive his trial rights.

23       Federal Rule of Criminal Procedure 11(c) requires that, before accepting a guilty  
24 plea, a Court must inform the defendant of, and determine if a defendant waives, various  
25 constitutional rights, including:  
26

27               • the right to plead not guilty, or having already so pleaded, to persist  
in that plea;  
28               • the right to a jury trial;

- 1        • the right at trial to confront and cross-examine adverse witnesses;
- 2        • the right to be protected from compelled self-incrimination;
- 3        • the right to testify and present evidence; and
- 4        • the right to compel the attendance of witnesses.

5            A court must ensure that the defendant understands the nature of the proceedings in  
 6            order to ensure that he can knowingly and intelligently waive these various trial rights.

7            *See FED. R. CRIM. P. 11(c).* Only a competent defendant can properly make such a  
 8            waiver. *See Godinez v. Moran*, 509 U.S. 389, 396 (1993).

9            The standard for determining if a defendant is competent to enter a guilty plea is  
 10          equivalent to that for ensuring competency to stand trial – specifically “whether the  
 11          defendant has ‘sufficient present ability to consult with his lawyer with a reasonable  
 12          degree of rational understanding’ and has ‘a rational as well as factual understanding of  
 13          the proceedings against him.’” *Godinez v. Moran*, 509 U.S. 389, 396 (1993) (quoting  
 14          *Dusky v. United States*, 362 U.S. 402 (1960)).

15            **B. A bona-fide doubt exists as to Michael Kara’s competence to enter a plea,  
 16            requiring a psychiatric examination and report and a hearing to determine  
 17            whether or not he is competent to do so.**

18            When a court is presented with circumstances that raise a bona-fide doubt about a  
 19          defendant’s ability to consult with his lawyer with a reasonable degree of rational  
 20          understanding or with facts that call into question a defendant’s rational as well as factual  
 21          understanding of the proceedings, the court should hold a hearing to determine whether  
 22          the defendant is competent. *See 18 U.S.C. § 4241(a) (emphasis added); see also,*  
 23          *Godinez*, 509 U.S. at 401 n.12; *Pate v. Robinson*, 383 U.S. 375, 384-85 (1966).

24            The Ninth Circuit has described a bona-fide doubt as “sufficient doubt, good faith,  
 25          genuine doubt, reasonable doubt, and substantial question; these all describe the same

1 constitutional standard.” *Hernandez v. Ylst*, 930 F.2d 714, 716 n.3 (9th Cir. 1991). It  
2 exists “if there is ‘substantial evidence of incompetence.’ ‘Although no particular facts  
3 signal incompetence, suggestive evidence includes a defendant’s demeanor before the trial  
4 court, previous irrational behavior, and available medical evaluations.’” *Amaya-Ruiz v.*  
5 *Stewart*, 121 F.3d 486, 489 (9<sup>th</sup> Cir. 1997) (internal citations omitted).

7 Here, the defendant has a long history of mental illness. He has been treated for bi-  
8 polar disorder I and other mental illnesses dating back to 1994. A more detailed  
9 description of his mental health and treatment is set forth in the declaration of undersigned  
10 counsel in support of this motion. *See* Exh. A (Declaration of Ismail Ramsey). Michael  
11 Kara is currently taking a variety of medications that are prescribed to address his mental  
12 health. *See id.*  
13

15 Despite his ongoing treatment, recent interactions with his attorneys – coupled with  
16 his mental health history – raise a bona-fide doubt as to whether he is competent to waive  
17 his constitutional rights and enter a plea. Several statements by Michael to his counsel  
18 raise a bona-fide doubt as to this defendant’s competency sufficient to warrant an  
19 examination and hearing. This is despite numerous other interactions that by themselves  
20 did not raise such doubt. Defense counsel has set forth the nature of the various  
21 statements that raise a concern in a declaration filed under seal in conjunction with this  
22 motion. *See* Exh. A (Declaration of Ismail Ramsey).  
23

25 Because the declaration includes private information related to defendant’s medical  
26 history, the defense requests that this Court allow the Declaration of Ismail Ramsey in  
27 support of the motion be allowed to be filed under seal.  
28

1                   **C. This Court should order a psychiatric examination and report prior to**  
2                   **holding a hearing to determine the defendant's competency under 18**  
3                   **U.S.C. §§ 4241 - 47.**

4                   The hearing to determine a defendant's competency must be conducted pursuant to  
5                   Section 4247(d).

6                   Prior to the hearing, under 4241(b) and 4247(b), the court may order that a  
7                   psychiatric or psychological examination of the defendant be conducted and that a report  
8                   be filed with the court. *See 18 U.S.C. §4247(b).* The report shall include:

9                   (1) the person's history and present symptoms;  
10                   (2) a description of the psychiatric, psychological, and medical tests that  
11                   were employed and their results;  
12                   (3) the examiner's findings; and  
13                   (4) the examiner's opinions as to diagnosis, prognosis, and—  
14                   (A) . . . whether the person is suffering from a mental disease or  
15                   defect rendering him mentally incompetent to the extent that he is  
16                   unable to understand the nature and consequences of the proceedings  
17                   against him or to assist properly in his defense.

18                   ...

19                   *Id.*

20                   Given the circumstances that raise a bona-fide doubt as to Michael's competency,  
21                   it is appropriate for this Court to order that Michael Kara submit to such an examination  
22                   regarding competence. Within 10 court days of an order signed by this Court, the parties  
23                   will jointly select a psychiatrist to examine the defendant, and the government will bear  
24                   the costs of examination, pursuant to 18 U.S.C. § 4200 et seq. The parties will submit to  
25                   the Court a stipulation as to the selection of the psychiatrist.

26                   While the court may order a defendant into custody in order to secure an  
27                   examination, such an order here is unnecessary. Michael is released on a \$100,000 bond;  
28                   he has made all court appearances; and he is willing to voluntarily submit to an exam.

### III. Conclusion

For the reasons stated above, the defense asks this Court (1) to set a hearing to determine Michael Kara's competency to enter a guilty plea and (2) to order that Michael Kara be examined by a certified psychiatrist to determine his competency to enter a guilty plea and to file a report with this Court.

Further, the defense requests that the declaration of defense counsel Ismail Ramsey shall be filed and maintained under seal by the Clerk of the Court until further order directs otherwise, as the declaration includes private information related to the defendant's medical records.

Dated: February 24, 2010

Respectfully Submitted,

RAMSEY & EHRLICH LLP

//s//  
ISMAIL RAMSEY  
ATTORNEY FOR MICHAEL KARA

GOOD CAUSE HAVING BEEN SHOWN, this Court hereby ORDERS that a psychiatric or psychological examination of the defendant Michael Kara be conducted and that a corresponding report be filed with the court. *See 18 U.S.C. §4247(b).* The report shall address:

- Michael Kara’s mental health history and present symptoms;
- a description of the psychiatric, psychological, and medical tests that were employed and their results;
- the examiner’s findings; and
- the examiner’s opinions as to diagnosis, prognosis, and whether Michael Kara is suffering from a mental disease or defect rendering him mentally incompetent to enter a guilty plea to the extent that he is unable to understand the nature and consequences of the proceedings against him or to assist properly

1                   in his defense.

2                   The Court also orders that the Declaration of defense counsel Ismail Ramsey be  
3 filed and maintained by the Clerk of the Court under seal until another order directs  
4 otherwise.

5                   This Court further orders a hearing to determine Michael Kara's mental  
6 competency to enter a guilty plea on \_\_\_\_\_, 2010.

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8                   Dated:

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11                   HON. MARILYN HALL PATEL  
12                   US DISTRICT JUDGE

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